IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.423 OF 2005
IN
NOTICE OF MOTION NO.429 OF 2004
IN
SUMMARY SUIT NO.4600 OF 1997

Mr.A.K. Kanoria .. Appellant.

V/s.

United Phosphorous Ltd. .. Respondent.

Mr.Milind Vasudeo with Mr.H.H. Chande i/b. H.V. Chande for the appellant.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 7TH JUNE, 2005.

P.C. :

Heard Mr.Milind Vasudeo, the learned counsel for the appellant. We also perused the impugned order.

2. The learned counsel for the appellant contended that the summary suit filed by the present respondent against the appellant herein was founded on blank cheques. At the time of hearing of the summons for judgment, the case of the respondent was that the cheques were blank cheques but the learned Trial Judge did not consider the said aspect at the time of hearing of summons for judgment. But

thereafter in the criminal proceedings there was an admission by the respondent that the cheques were blank and even in response to the notice of motion under Order XXXVII Rule 4 C.P.C., there is admission by the respondent that the cheques were blank. In this background, the learned counsel submitted that the case indicating special circumstances for setting aside the decree under Order XXXVII Rule 4 C.P.C. was clearly made out and the learned Single Judge ought to have set aside the decree. The learned counsel relied upon the Division Bench judgment of this court in the case of Ramchandra Dhondu Dalvi V/s. Vithaldas Gokuldas [AIR 1964 Bombay 251].

3. We are not impressed by the submissions of the learned counsel for the appellant. The fact of the matter is that in opposition to the summons for judgment, the present appellant raised various defences. Not much merit was found in the said defences but keeping in view the fact that there may be some substance in the defences that were raised by the present appellant, the learned Trial Judge by order dated October 25, 1999 granted leave to the present appellant on the condition of depositing an amount of Rs.47,00,000/- within a period of sixteen weeks therefrom. The present appellant challenged the order dated October 25, 1999 in appeal. The

appeal was dismissed on June 13, 2000. However, time for depositing the said amount is extended by six weeks. The present appellant carried the matter to the Supreme Court but without any success. The amount of Rs.47,00,000/- as was directed in the order dated October 25, 1999 and that order having been confirmed right upto the Supreme Court, being not complied with, the decree came to be passed on February 12, 2001.

4. In view of the fact that the appellant failed to comply with the order of conditional leave to defend, the decree as a matter of course had to follow. It may be noticed here that the judgment of the criminal Court was passed on January 11, 2000 i.e., much before the decree was passed on February 12, 2001. The appellant was represented by his advocate before the learned Single Judge on February 12, 2001 and on that date no such argument was advanced before the learned Single Judge.

5. In our considered view for non compliance of the order granting conditional leave to defend to the appellant, if the decree came to be passed, the same cannot be faulted. The facts aforenarrated do not make out special circumstances under Order XXXVII Rule 4 C.P.C. for setting aside the decree dated

February 12, 2001.

6. The legal position laid down by the Division Bench of this Court in the case of Ramchandra Dhondu Dalvi (supra) is not in doubt but on facts the said judgment has no application.

7. The appeal does not deserve to be admitted and the same is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)